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SECURITY COUNCIL
Fifty-fourth year

Identical letters dated 21 January 1999 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to enclose herewith a letter dated 21 January 1999 from Samdech Hun Sen, Prime Minister of the Royal Government of Cambodia (see annex I), and an aide-mémoire, also dated 21 January 1999, on the issue relating to the working out of a formula to bring top Khmer Rouge leaders to trial (see annex II).

I should be very grateful if you would have the text of the present letter and its annexes circulated as a document of the General Assembly, under agenda item 110, and of the Security Council.

(Signed) OUCH Borith
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

99-01591 (E) 220199

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ANNEX I

Identical letters dated 21 January 1999 from the Prime Minister of Cambodia to the Secretary-General and the President of the Security Council

Further to the letter of 21 June 1997 from the Royal Government of Cambodi addressed to you I have the honour to enclose a copy of an aide-mémoire and analysis, which I handed over to Ambassador Thomas Hammarberg, the Special Representative of the Secretary-General for Human Rights in Cambodia, on the issue relating to the working out of a formula to bring Khmer Rouge leaders to trial.

I firmly believe that the paper will make a significant contribution to what we should be doing in a spirit of responsibility in the future.

(Signed) HUN SEN
Prime Ministe

ANNEX II

Aide-mémoire dated 21 January 1999

An analysis on seeking a formula for bringing top Khmer Rouge leaders to trial

- Over the past weeks, after the return to the fold of the nation as simple citizens of Khiev Samphan and Nuon Chea on December 25, 1998, there emerged public opinions and positions that deserved to take into consideration. First of all, everyone welcomes this event and considers that:

- This event confirmed that the Khmer Rouge organization had come to an end. The national reconciliation in Cambodia, which was the source of peace and stability, had been fulfilled once and for all, and this peace and stability, in turn, would bring new national development to Cambodia. The Royal Government of Cambodia (RGC), which is the executive power, has succeeded in carrying out its tasks in solving the issues of national reconciliation, finding peace, bringing about stability, and leading the country towards a new development in accordance to the policy approved by the National Assembly. RGC is now controlling all corners of the country, which yet succeeded before. The threats of the return of the genocidal regime that was in existence within the past 20 years had come to an end.

- At the same time, there existed opinions that demand for an urgent trial. Some even called for the arrest of the Khmer Rouge leaders, treating them as prisoners of war, upon their return to the fold of the nation. There existed also counter-opinions. Both opinions and counter-opinions have prompted an inquiring atmosphere that whether ten thousands of former Khmer Rouge soldiers and their families who thus far defected have any concern for their fates in the future.

- At present, there is an assessment that the last stage of the national reconciliation is very significant. It may lead Cambodia to a long lasting peace and development, or it may plunge Cambodia into instability and insecurity. Those with this assessment are in the position that a trial is inevitable, and that there must be a full guarantee for social issue and economic development within stable and peaceful environment of Cambodia. The two topics, to seek a formula for the trial and national reconciliation, must be taken into consideration simultaneously, without intending to prioritize one over another. This means that the two topics deserve concurrent consideration within the context of national reconciliation and inviolability of Cambodian sovereignty. They wish to see that the RGC continues to make efforts in line with this tendency, and are prepared to provide assistance to the latter. Several questions have also been raised:

- What is an appropriate tribunal to be established? International or national? A mixed of both? Or other form of tribunal?

- How will the offences be charged? In which periods? From 1970? Only between 1975 to 1979? Or between 1979 to 1998? Those demand a consideration for the nature of the fact pattern from 1970 to 1998 stressed that it is an inseparable set of facts.

- Therefore, the following issues need to be properly considered in the context of seeking a formula for a tribunal to be set up and providing the opportunity for lawyers to review all legal aspects.

1) Court of Law

- The main request, for establishing a court of law to try criminals of genocide, is to guarantee that justice is done for Cambodian people, and responsible people are punished. It is not at all for the purpose of revenge, but for both justice and non-recurrence of crime of genocide – assuring that no more Cambodian will be killed or victimized.

- It is unavoidable to consider the suggested period from 1979 to 1998, since after carrying out crime of genocide from 1975 to 1979 and being expelled from power, the Pol Pot political and military organization still existed and continued to be the vital threats to Cambodian people. The massacre of innocent citizens in various regions, including areas under their control, and the killing of foreigners and personnel of UNTAC were natures of crime against humanity. It is therefore necessary to conduct investigations on crimes and offenders of each stage, and define the causes and legal aspects of each period:

    - From 1970 to 1975 - what kind of offense to be considered and charged?
    - From 1975 to 1979 - what kind of offense?
    - From 1979 to 1998 - what kind of offense?

- Who committed crimes? There were different crimes in each period. One needs to consider also that if the criminals and the victims are Cambodian and the crime took place in Cambodia, then what kind of court of law would suit both legal and moral aspects? If it is a mixed court, there must be legal provision approved by the national assembly, and joined training among lawyers to guarantee the legal effectiveness. Shall there be an international court, it would be established by the United Nations. Would the United Nations Security Council be able to establish it?

- Whatever the court will be, it has to look into related causes and effects from the beginning to an end. Therefore, the successive periods mentioned above, as sounded out by public opinions, will have to be taken into consideration, as it is the basis to guarantee for justice of the trial.

- In August 1979, the Kampuchean People's Revolutionary Court conducted a trial and issued a verdict specifying the period from 1975 to 1979. An upcoming court to be set up should consider this verdict.

- Besides the Kampuchean People's Revolutionary Court of August 1979, there were two trials to be mentioned. The first trial was in July 1970 held by the Martial Court of the former Khmer Republic. It passed an unjust death sentence on His Majesty the King, Samdech Preah Norodom Sihanouk, and a life imprisonment sentence on Samdech Preah Reach Akak Mahesei Monineath Sihanouk, after the coup that was overthrowing him in March 1970. The second trial was held at the beginning of 1975 by the National United Front of Kampuchea and passed death sentences on seven individuals; namely, Lon Nol, Sirik Matak, Cheng Heng, In Tam, Long Boret, Sosthene Fernandez, Hang Thunhak -- among whom only In Tam and Sosthene Fernandez are still alive. The Khmer Rouge killed Sirik Matak, Long Boret, and Hang Thunhak, whereas Lon Nol and Cheng Heng died of diseases.

2) Prosecution, Instability, National Reconciliation, and Peace

- National reconciliation and peace are indispensable requirement of the Cambodian nation and people, and the trials of offenders to find justice for Cambodian are the goal and obligation to be fulfilled.

- Morality and justice are of significant foundation and driving force for the current situation in Cambodia during its transitional period from national reconciliation and democracy to stability and long lasting peace.

- There must be due consideration before taking any action, avoiding any action that would jeopardize national reconciliation in Cambodia. **We need both peace and justice.**

- From many years of experience, when war was erupted we neither could find justice for the people nor could we protect them from being killed and destructed, and it was always the Cambodian people who were victims. Peace that we achieved at the moment is stemming from the will of the Cambodian people after two billion US dollars had been spent by the United Nations. We welcome and continue to appreciate the moral and material assistance extended by the international community for safeguarding and assuring peace, national reconciliation, and development in Cambodia.

- Since instability or peace is the vital issue for the Cambodian nation and people, the National Assembly that represents the will of the people has important responsibility and decision to make on what to do to reflect the sovereignty of Cambodia that leave Cambodian to decide their destinies by themselves.

- The above mentioned issues are collective public opinions which deserved consideration from the legislative body, executive body, the court of Cambodia, and concerned international community.

- We do not want to fall in a plight like a Cambodian saying, "**the boat sinks when it reaches the shore.**"